

MEDIATION AGREEMENT

RE:

(insert matter name)

This agreement is made between **Bruce Thiele** ("the mediator"), the parties to the above proceeding or dispute ("the parties") and their respective solicitors ("the solicitors").

The agreement is:

- 1 There exists a dispute which is described in the court pleadings or claim papers exchanged between the parties ("the dispute").
- 2 The parties wish to resolve the dispute with the assistance of a mediator.
- 3 The parties have agreed to the appointment of the mediator to assist in such resolution.
- 4 The solicitors retain the mediator to mediate the dispute.
- 5 The following provisions are incorporated as terms of this agreement:
 - (a) Chapter 10 of the *Family Law Rules 2001 (Cth)*
 - (b) Section 131 of the *Evidence Act 1995 (Cth)*.
- 6 The parties will reasonably attempt to resolve the dispute.
- 7 The mediation will ensue at a venue to be reasonably agreed between the solicitors and the mediator. The parties will bear any venue costs.
- 8 The parties will conduct the mediation in private. Only the parties to the dispute and their legal representatives (the solicitors and any counsel engaged) may attend the mediation unless the mediator and the parties otherwise consent.
- 9 The parties, the solicitors, and the mediator will keep confidential all things said or done during the mediation process, whether orally, in writing or by conduct, unless the parties otherwise agree.
- 10 The mediation will be conducted on a "without prejudice" basis, that comprising:-
 - (a) the prior exchange of mediation outlines or other documents under this agreement or otherwise upon the mediation;
 - (b) anything said or done by the parties, the solicitors or counsel at or upon the mediation;
 - (c) the views expressed or suggestions made by the mediator or any party in respect of a possible settlement of the dispute;
 - (d) proposals for settlement of the dispute made by the mediator or any party;
 - (e) the fact that any party has indicated willingness to accept a proposal for settlement made by the mediator; or
 - (f) notes or statements made by the mediator.
- 11 In advance of the mediation, the parties will serve mediation outlines as the mediator considers appropriate, and will provide copies of such materials to the mediator.
- 12 Save for material identified as "Confidential - for the attention of the mediator on behalf of the named party", which may be submitted to the mediator by any party, the parties agree to nominate one of them to prepare and submit to the mediator on behalf of all parties one copy all of the material intended to be relied upon by the parties and to provide

an index of that material to each of the other parties. Such material is to be delivered to the mediator no later than 5 working days prior to the date fixed for the mediation.

- 13 The parties will not be bound by any comments, suggestions, or recommendations of the mediator.
- 14 Any agreement between the parties reached at or upon the mediation, in relation to the dispute or any discrete issue therein, is not binding on any party unless and until it is recorded in a written agreement signed by the parties or their legal representatives.
- 15 The mediation may be terminated:-
 - (a) by the respective solicitors for the parties giving written notice to the mediator that they have resolved their dispute; or
 - (b) by the solicitors for any party to the dispute giving notice (written or oral) of termination of the mediation to each other party and to the mediator; or
 - (c) by the mediator giving notice (written or oral) to the respective solicitors that:
 - (i) the terms hereof have not been complied with; or
 - (ii) further pursuit of the mediation is not justified or desirable and that the mediator has accordingly ceased to act as a mediator.
- 16 If the dispute is not resolved by the agreement reached at the mediation, the parties agree that the costs and expenses associated with the mediation (including the mediator's fees) shall be each party's costs in the cause of the present or any future court proceeding between the parties concerning the dispute.
- 17 The mediator will be paid the mediation fees in the amounts and at the times set out in Schedule 1. The terms therein are operative terms of this agreement.
- 18 The solicitors agree to pay such mediation fees.
- 19 Neither the parties nor the solicitors will require the mediator to give evidence or produce any document in any legal proceedings concerning the dispute, other than legal proceedings brought to enforce or challenge the validity of any agreement arising from the mediation.
- 20 The parties agree the mediator is not a necessary party to any litigation or arbitration between the parties relating to the dispute or any related dispute between them.
- 21 To the extent which the law permits:-
 - (a) any liability of any nature whatsoever of the mediator, including breach of duty of care (if any) in contract or in the tort of negligence, in respect of any matter arising out of this agreement or in any way connected with this agreement or anything done or omitted to be done under or in connection with the agreement, or at or upon the mediation, is excluded;
 - (b) the express terms of this agreement contain the whole of the obligation of the mediator relating to this agreement and the mediation. Any obligation of the mediator which might otherwise be implied is excluded.
- 22 In consideration of the above, the mediator agrees to mediate the dispute for the period specified in Schedule 1.

SCHEDULE 1

MEDIATOR'S FEES AND EXPENSES

- (a) The mediation hearing is estimated to take **1 day** (not longer than **7 hours**). Any additional time spent will be charged and payable at a rate of **\$400.00** per hour plus GST (then becoming part of the fee). The venue cost will be met by the parties unless conducted in the mediator's chamber rooms (if available).
- (b) The mediator will be paid a fee of **\$4,400.00** (being **\$4,000.00** plus GST of **\$400.00**) (together "the fee"). The fee includes prior reading and preparation, the mediation hearing and mediation administration. The fee is struck on the basis that the documents received do not exceed two lever arch folders in volume (contents printed on one side) and the mediation is to ensue on the date appointed for 1 day (not longer than **7 hours**). Any additional time spent (in reading a larger volume of documents, or in extended mediation duration (consented to by continued participation therein), will be charged and payable at a rate of **\$400.00** per hour plus GST ("the additional fee"). The fee includes the mediator's travel from chambers to the mediation location. Where travel time exceeds **3** hours duration, travel time will be charged and payable at a rate of **\$200.00** per hour plus GST ("the travel fee") for such travel time exceeding **3** hours.
- (c) If the mediation is cancelled or postponed by one or more of the parties, irrespective of fault, or the matter settled thereby dispensing with mediation, in either case with the same communicated to the mediator or the mediator's staff later than 5.00 pm on the third last working day prior to the appointed mediation date then, in addition to any then expended reading or preparation time, the fee will be **\$660.00** (**\$600.00** plus GST of **\$60.00**) being an assumed 1 ½ hours preparation hearing time on the mediation hearing date calculated at the said rate of **\$400.00** per hour.
- (d) The solicitors are retaining the mediator for the mediation and agree to pay the fee (and the additional and travel fee, if any) in respect of the parties. The proportionate liability for the fee (and the additional fee, if any) is as follows:
- – **50% share**
(insert party # 1 name)
 - – **50% share**
(insert party # 2 name)
- Such fee liability is several, not joint, in respect of such share.
- (e) The fee (and any additional fee) will be paid within 21 days of the mediator issuing an invoice to the solicitors.

NB - This agreement is signed by the solicitors for the parties on behalf of the parties and on their own behalf:-

1. Name of Party:
Status of Party:.....

Signature of Solicitor for Party :

Date:

2. Name of Party:.....
Status of Party:.....

Signature of Solicitor for Party:.....

Date:

3. Name of Party:.....
Status of Party:.....

Signature of Solicitor for Party:

Date:

4. Name of Party:.....
Status of Party:.....

Signature of Solicitor for Party:

Date:

5. Name of Party:.....
Status of Party:.....

Signature of Solicitor for Party:

Date:

6. Name of Party:.....
Status of Party:.....

Signature of Solicitor for Party:

Date:

The mediator: _____

Dated: / /